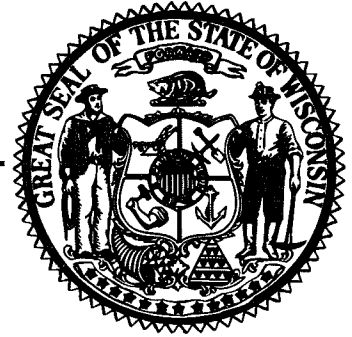


**FRED A. RISSE**  
President  
Wisconsin State Senate

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**Testimony on Senate Bill 635**  
Senate Committee on Health, Health Insurance, Privacy,  
Property Tax Relief, and Revenue  
April 14, 2010

Senator Erpenbach and members of the committee,

Thank you for holding a hearing on Senate Bill 635, relating to the duties of physicians and of the Medical Examining Board. I appreciate your efforts to move this bill prior to the end of the session.

Current law allows the Medical Examining Board to issue licenses to practice medicine and surgery. Additionally, the Medical Examining Board oversees perfusionists, physician assistants, and respiratory care practitioners.

Senate Bill 635 makes a number of changes to current law regarding the board's ability to suspend licenses to practice, liability for those who report unprofessional conduct, and requirements for continuing education.

Current law allows the board to suspend a credential if there is probable cause to believe that the credential holder has violated the law or public safety. Senate Bill 635 provides that the board chair and two board members designated by the chair may suspend a credential if there is probable cause.

Senate Bill 635 will require a person licensed by the board as a physician to promptly report if they are witness to any of the following behaviors:

1. Another physician engaged in acts that constitute a pattern of unprofessional conduct.
2. Another physician engaged in an act that creates an immediate or continuing danger to one or more patients or to the public.
3. Another physician is or may be medically incompetent.
4. Another physician is or may be mentally or physically unable to engage in the practice of medicine or surgery.

It is important to note that a physician who complies in good faith with the duty to report provisions of this bill may not be held civilly or criminally liable or be found guilty of unprofessional.

Finally, Senate Bill 635 will require a physician to complete professional development and maintenance of certification and include proof of attendance at and completion of these additional programs when completing the biennial application for registration with the board. The board may waive this new requirement if it finds that exceptional circumstances have prevented the physician from meeting the requirement.

Dr. Gene Musser, Chair of the Medical Examining Board, will also be testifying today. He will be able to speak to the issue of why these changes are necessary and how they will improve the ability of the board to take action in cases of unprofessional conduct.

Thank you for your consideration of Senate Bill 635. I would be happy to answer any questions that you might have.



# Wisconsin Medical Society

Your Doctor. Your Health.

TO: Assembly Committee on Health and Healthcare Reform; Representative  
Jon Richards, Chair

FROM: Chris Mambu Rasch, Government Relations Specialist

DATE: March 24, 2010

RE: Neutral Position:  
Assembly Bill 877 – Medical Examining Board Duties of Physicians

On behalf of nearly 12,500 members statewide, the Wisconsin Medical Society thanks you for this opportunity to share our thoughts on Assembly Bill 877, relating to the Medical Examining Board. We also thank the MEB for their desire to hear the Society's opinion on these matters.

Given the short period of time between introduction and a public hearing we are not prepared to support the bill today. While the Wisconsin Medical Society has some concerns and our Board to-date has not fully weighed-in on this bill, we generally agree with the spirit of the bill and our general impression is favorable.

## Duty to Report

The Wisconsin Medical Society believes it is an ethical duty to report an impaired physician and has policy on the duty of physicians to report impaired, incompetent or unethical colleagues (See below). This bill would make the duty to report a matter of law and not professional ethics.

If the duty to report is to become law we believe it is important that there be liability protection for physicians who make a good faith effort to report. We appreciate that the authors of the bill have included civil and criminal protection to a physician who makes a good faith effort to comply with the duty to report and therefore we are supportive of such language.

The Society has a concern with legally requiring a duty to report: legal mandatory reporting may drive sick physicians "underground" and make identifying and

rehabilitating physicians more difficult. The most dangerous thing is for a physician to be unidentified and untreated.

A rehabilitation orientation vs. a punishment orientation would be more beneficial to patients and the physician. The Wisconsin Medical Society believes that legally requiring physicians to report to Physician Health Programs like those in other states would be the best avenue for protecting patients and ensuring that physicians get the care and help that they need. The Society's policy reflects this: //

#### **IMP-002**

**Reporting Impaired, Incompetent or Unethical Colleagues:** The Wisconsin Medical Society believes it is imperative that physicians continue their long history of assisting authorities by reporting impaired, incompetent and unethical colleagues. Physicians should make such reports to the appropriate entity or entities, which may be one or more of the following: Medical Examining Board, Statewide Physician Health Program, law enforcement authorities, hospital peer review committees, management staff of the facility or organization.

While such reporting is important, it is also important to keep in mind that allegations are very different from findings of fact.

Physicians should support:

- Observation of the principles of due process during disciplinary hearings or other procedures involving physician participants at all levels;
- Maintaining the confidentiality of the reporting physician, to the extent possible within the constraints of the law, by entities engaged in review of physician behavior; and
- Laws that provide immunity to those who report impaired, incompetent or unethical conduct.

The medical profession should make known its commitment to protect the public from incompetent, impaired or unethical physicians by better communicating its efforts and initiatives at maintaining high ethical standards and quality assurance. (HOD, 0407)

#### **Suspension Power**

The Society supports the MEB's efforts to protect the public while respecting the due process rights of all who are investigated. The Wisconsin Medical Society believes that any efforts to allow the MEB greater flexibility to investigate complaints in a timely manner must continue to ensure that due process be protected.

This bill would grant the MEB greater flexibility to summarily suspend a physician license between monthly MEB meetings. The MEB chair and two members designated by the chair would be allowed to execute such an order and eliminates certain limitations on the time period such a suspension holds pending a final disciplinary order.

The Society believes the MEB should make all attempts to use efforts like teleconferencing, webinars, and videoconferences of the whole MEB Board before a smaller designated group uses their authority to summarily suspend a //

credential. The bill requires a hearing within 20 days if a hearing to show cause is requested and the Society is generally supportive of such language particularly if efforts to convene a smaller designated group have been exhausted.

**Biennial training requirement**

The bill's authors have added professional development and maintenance of certification of performance improvement to the continuing medical education programs or courses of study rules. The Society is very supportive of such efforts.

**Temporary educational permit to practice medicine and surgery.**

The elimination of the prohibition on prescribing narcotics for a person holding a temporary educational permit to practice medicine and surgery is a change that has long been sought by many and the Society is generally supportive of such efforts.

Thank you again for this opportunity to provide the Society's opinions on AB 877. The Society stands ready to continue collaborations with the state's policymakers on protecting the delivery of health care in Wisconsin.